

Residential Tenancies Tribunal

Application 2022-0692-NL

Decision 22-0692-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 22-September-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” did not attend.

Preliminary Matters

4. The landlord was not present or represented at the hearing, I reached her by telephone at the start of the hearing, however she disconnected the call. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as she has been properly served. The landlord submitted an affidavit (TT#01) with her application stating that she had served the tenant with notice of the hearing, by prepaid registered mail on 06-September-2022, the tracking number shows that the package was delivered on 07-September-2022. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in her absence.

Issues before the Tribunal

5. The tenant is seeking:
 - Security deposit refunded \$1,312.50
 - Rent refunded \$3,400.00
 - Compensation for inconvenience \$820.00
 - Hearing expenses reimbursed \$78.44

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 12: Future rent, and Section 14: Security Deposit.

Issue 1: Security deposit refunded \$1,312.50

Relevant Submissions

8. The tenant said that she signed a two year term rental agreement with the landlord on 01-October-2020 until 30-September-2022. She had requested that the term only be a year, however she said that the landlord insisted that she sign a two year lease. The tenant said she never received her copy of the lease. She said that she paid \$1,700.00 on the first day of each month. She said she paid a security deposit of \$1,312.50 on 10-August-2020. She provided a receipt for the interact transfer of the security deposit. (TT#02)
9. The tenant said that this past spring, the landlord had informed her that she was trying to sell the house and she wanted her to look for housing. The tenant found a new place in May and told the landlord that she would be able to move the end of June. The landlord was already showing the house and accepted her notice. The tenant moved 30-June-2022.
10. The tenant is requesting full reimbursement of the security deposit.

Analysis

11. The tenant applied for the return of her security deposit and served the landlord with notice of the claim on 07-September-2022. As per Section 14 of the *Residential Tenancies Act, 2018*:

Security deposit

14. ...

(8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may **apply to the director** under section 42 to determine the disposition of the security deposit.

(11) Where a **tenant makes an application** under paragraph (10)(b), the **landlord has 10 days** from the date the landlord is served with a copy of the tenant's application to **make an application** to the director under paragraph (10)(b).

(12) A landlord who **does not make an application** in accordance with subsection (11) **shall return the security deposit to the tenant**.

(13) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

(15) For the purpose of subsections (8) to (14), "security deposit" includes the interest credited under subsection (7).

12. Section 14 states that once a tenant makes an application for the return of the security deposit, the landlord has 10 days to file a claim, from the date they are notified of the application. The landlord did not file a claim within the 10 days, therefore the security deposit is to be returned to the tenant.
13. The landlord shall return the full security deposit to the tenant.

Decision

14. The tenants claim for return of the security deposit succeeds in the amount of \$1,312.50.

Issue 2: Rent refunded \$3,400.00

Relevant Submissions

15. The tenant said that when she signed the lease with the landlord she provided her with post-dated cheques for her rent each month. She said that after she moved out, the landlord continued to cash the cheques.
16. She said that the landlord put her account into overdraft when she took out those rent payments. In July, when she realized that the landlord had cashed her July cheque, she contacted the landlord and told her of her mistake and asked her to refund the money.
17. The tenant provided the email transfer transaction record (TT#02) showing the July payment and the cost of her stop payment fee.
18. The tenant said that the landlord ignored her text. The landlord also cashed the cheque for August. The tenant said that the landlord tried to cash September's cheque but the bank caught the transaction.

19. The tenant is seeking her rent refunded for the months of July and August 2022 when she didn't live at the house.

Analysis

20. Rent payments are for use and enjoyment of the rental premises. I accept that the tenant wasn't living at the house after 30-June-2022 and find that the landlord shall reimburse the tenant the cost of the cheques cashed for July and August rent totaling \$3,400.00.

Decision

21. The tenant's claim for rent refunded succeeds in the amount of \$3,400.00.

Issue 3: Compensation for inconvenience \$820.00

Relevant Submissions

22. The tenant said that she moved into the house on 01-October-2020. She said that the previous tenants moved out on 30-September-2020. She said that the landlord had assured her that the house would be cleaned after the previous tenants moved. The tenant said her daughter has health issues and it was imperative that the house be cleaned before she could move in during a pandemic.

23. The tenant said that when she moved in the house required a lot of work. The landlord told her to do what was necessary and that she would repay her for the work. She said that the landlord never repaid her for the work that was completed. The tenant did not provide receipts or pictures for the work done.

Work completed	Cost supplies	time
Installed new toilet	165.00	
Fixed leaky faucet in kitchen	50.00	45 mins
Replaced runner sliding door	20.00	15 mins
Replaced runner closet door	20.00	15 mins
Gas delivery and time to bring former tenants stuff to dump	50.00	2 hours
Labour and disposal of fallen tree	25.00	1 hour
Installed outdoor lights	30.00	1 hour
Dryer delivery to landlord	25.00	1 hour
Cleaning of entire residence upon move in	65.00	4 hours
Professional cleaner for carpet	100.00	
Stress and anxiety for financial issues	200.00	

24. Cost of banking charge for stop payment on cheques (TT#02) \$20.00.

Analysis

25. I accept the tenant's testimony that she completed work around the house and that she believed that the landlord would reimburse her for the work that was completed. However, the tenant did not prove the cost of the work completed in the table in paragraph 23. The tenant didn't submit any receipts, or any pictures to show that the work was necessary or any screen shots or emails between herself and the landlord to indicate that the landlord had agreed to compensate her for the work being done. The tenant hasn't meet the burden of proof for her claim.
26. The tenant has also included in the table the cost of stress and anxiety, this board doesn't award for the cost of pain and suffering.
27. The tenant did however, provide evidence to support the cost of her stop cheque charge and her claim for \$20.00 will succeed.

Decision

28. The tenant's claim succeeds in the amount of \$20.00.

Issue 4: Hearing expenses reimbursed \$78.44

29. The landlord submitted the receipts for the cost of the hearing expenses:
 - Application fee (LL#05) \$20.00
 - Prepaid mail (LL#04)..... 13.44
 - And commissioner of Oaths fee (LL#04) 45.00
 - Total..... \$78.44

and pursuant to policy 12.01, is entitled to reimbursement of those costs totaling \$78.44 from the landlord.

Summary of Decision

30. The landlord shall pay to the tenant \$4,810.94, as follows:
 - Security deposit \$1,312.50
 - Rent returned..... 3,400.00
 - Compensation for inconvenience 20.00
 - Hearing expenses..... 78.44
 - Total..... \$4,810.94

September 27, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office